IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2665 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE A.R.DAVE
and
HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHABHAJI SANKARJI

Versus

SPL.LAND ACQUISITION OFFICER

Appearance:

1. Special Civil Application No. 2665 of 2005
MR GM AMIN for Petitioner No. 1-13
Ms MANISHA LAVKUMAR, AGP, for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE A.R.DAVE
and
HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 06/05/2005

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE A.R.DAVE)

RULE. Service of rule is waived by learned Assistant Government Pleader, Ms. Manisha Lavkumar for the respondents. Looking to the facts of the case, and in pursuance of request of the learned advocates, the petition is finally heard today.

2. The petitioners have challenged the validity of an order dated 10.2.2004 passed by respondent No. 1 on an application submitted by them under the provisions of section 28A of the Land Acquisition Act, 1894 [hereinafter referred to as 'the Act'].

3. It is the case of the petitioners that their different parcels of land situated in the sim of village Torna, Taluka Kapadvanj, Dist. Kheda, had been acquired. Being aggrieved by the meagreness of the compensation offered by the authorities, some of the claimants had made reference applications, being Ref. Case Nos. 59/95 to 65/95 and 1145/96 to 1158/96, before the Disitrict Court, Kheda at Nadiad. Ultimately, by an order dated 19th January, 2000, the District Court had enhanced the amount of compensation in the said Reference proceedings initiated by some of the claimants.

4. Upon knowing the aforesaid fact, the petitioners had submitted an application under section 28A of the Act to respondent No. 1 on 1.3.2001 praying for higher amount of compensation on the basis of the aforestated order passed by the District Court. Along with the said application, the petitioners did not annex a certified copy of the awards dated 25.5.1993 and 24.9.1993. Respondent No. 1 has rejected the application by his order dated 10.2.2004 on the ground that the petitioners had not annexed a certified copy of the awards dated 25.5.93 and 24.9.93 on which the petitioners were relying upon for getting higher amount of compensation.

5. Learned advocate Mr. G.M.Amin appearing for the petitioners has submitted that it was not necessary for the petitioners to annex a certified copy of the award while submitting an application under section 28A of the Act.

6. So as to substantiate the aforesaid argument, the learned advocate for the petitioners has submitted that upon knowing that some of the claimants, whose lands had also been acquired by a common notification issued under the provisions of section 4 of the Act, had been awarded

higher compensation in pursuance of an application made under the provisions of section 18 of the Act, the petitioners had submitted an application under the provisions of sec. 28A of the Act. It has been submitted by him that it was not at all obligatory on the part of the petitioners to annex a certified copy of the award on which the petitioners wanted to rely upon. He has drawn our attention to the judgment of this Court in the case of C.N. PATEL vs. SP. LAND ACQUISITION OFFICER reported in 2005 (1) GLH 88 and has submitted that looking to the law laid down by this Court in the said judgment, it is clear that it was not necessary for the petitioners to annex a certified copy of the award along with the application submitted under the provisions of sec. 28A of the Act.

7. Thus, it has been submitted by the learned advocate appearing for the petitioners that the impugned order is bad in law, and is required to be quashed and set aside, and in the interest of justice, the petitioners should also be awarded higher amount of compensation which has been awarded to similarly situated persons, who had filed applications under the provisions of sec. 18 of the Act.

8. Learned Assistant Government Pleader, Ms. Manisha Lavkumar on the other had submitted that it was the duty of the petitioners to annex a certified copy of the award alongwith the application so as to enable respondent No. 1 to look into the same while passing the final order but the petitioners had failed in doing so.

9. We have heard the learned advocates and have also considered the facts of the case. We have also gone through the judgment delivered by this Court in the case of C.N. Patel [supra].

10. Upon perusal of the judgment and upon hearing the learned advocates, we are of the view that the impugned order deserves to be quashed and set aside.

11. In our opinion, it was not necessary for the petitioners to annex a certified copy of the award relied upon by them alongwith the application filed under the provisions of section 28A of the Act in view of the law laid down by this Court in the case of C.N.Patel [supra].

12. We, therefore, quash and set aside the impugned order dated 10/2/2004 and direct respondent No. 1 to reconsider the case of the petitioners. It is clarified that at the time of hearing of the application, if the

petitioners are called upon to produce a certified copy of the award on which they want to reply upon, the petitioners shall procure the same and place the same before respondent No. 1 for his consideration.

13. We further clarify that it would be open to respondent No. 1 to reject the application if he comes to a conclusion that the original application submitted under the provisions of section 28A of the Act was not submitted within the period of limitation or if there is any other reason for not entertaining the application. In other words, respondent No. 1 shall look into the application on merits and decide the same as we have not examined any other aspect of the matter.

14. Respondent No. 1 shall reconsider the application and after hearing the petitioners shall take a fresh decision as soon as possible. The matter is remanded to respondent No. 1 accordingly. Rule is made absolute, with no order as to costs.

(A.R. Dave, J.)

(P.B. Majmudar, J.)
(hn)